

DATE: July 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-11246

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A financial considerations concern arose during renewal of Applicant's security clearance when it was discovered he owed over \$34,000.00 to various creditors. Additionally, a personal conduct concern arose when Applicant falsified his security clearance application by deliberately failing to list his delinquent debts. Applicant has failed to mitigate both concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 30, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on February 10, 2004, and elected to have a hearing before an administrative judge.

Three previous administrative judges had been assigned to this case on November 10, 2004, December 9, 2004, and February 8, 2005, respectively. On March 10, 2005, the third administrative judge issued a notice of hearing scheduling a hearing for April 7, 2005. On April 1, 2005, the case was transferred to me, the fourth administrative judge. All reassignments were done due to caseload considerations. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered five documents, which were admitted without objection as Government Exhibits (GE) 1 through 5. The Applicant offered seven documents, which were admitted without objection as Applicant Exhibits (AE) A through G. DOHA received the transcript on April 19, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the

pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 49-year-old married man. He was married to his first wife from July 1978 to February 1998. That marriage ended in divorce. Two children were born of that marriage - a daughter, age 26, and a son, age 24. Applicant has been married to his second and current wife since June 1988. Applicant has attended a community college and estimates he is "about six hours short of an associate's degree." He served in the Air Force from July 1977 to July 1997, and retired as a Technical Sergeant, pay grade E-6. Applicant held secret and top secret security clearances for the majority of his Air Force career.

Since November 1997, Applicant has been employed by two defense contractors. The first company was bought out by the second company. Applicant has been employed by both companies as an armament technician. He seeks a secret security clearance, which is a requirement for his current position.

The SOR alleges Applicant is in arrears on 11 debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

Debt	Nature & Amount in SOR	Current Status	Record
Debt 1/SOR ¶ 1.a	Collection account in the amount of \$24,829.00.	Settled for \$12,460.00. Making \$300.00 monthly payments.	Tr. 20-22; AE A.
Debt 2/SOR ¶ 1.b.	Credit card charged off account in the amount of \$3,156.00.	Not paid/unresolved. Applicant claimed son's account at hearing. Claimed daughter's account in April 2001 statement. No documentation.	Answer to SOR; Tr. 22-25; GE 2.
Debt 3/SOR ¶ 1.c.	Credit card collection account in the amount of \$1,790.00.	Settled for lesser amount. Will begin making monthly payments of \$100.00. No documentation.	Tr. 25-26; AE B.
Debt 4/SOR ¶ 1.d.	Jewelry store charged off account in the amount of \$944.00.	Making monthly payments of \$75.00.	Tr. 26-27; AE C.
Debt 5/SOR ¶ 1.e.	Dental office collection account in the amount of \$437.00.	Not paid/unresolved. Uncovered dental work provided for Applicant's son.	Tr. 27-28; AE D.
Debt 6/SOR ¶ 1.f.	Phone company collection account in the amount of \$646.00.	Not paid.	Tr. 28-29.
Debt 7/SOR ¶ 1.g.	Hospital collection accounts in the amounts of \$594.00, \$128.00, \$252.00 and \$61.00.	Not paid. Hospital billing error. Used wrong social security number when billing insurance company.	Tr. 29-31.
Debt 8/SOR ¶ 1.h.	Hospital collection account in the amount of \$120.00.	Not paid. Applicant attempting to get insurance to pay.	Tr. 31-34; AE G.
Debt 9/SOR ¶ 1.i.	Cable company collection account in the amount of \$651.00.	Applicant returned cable boxes, but owes approximately \$400.00.	Tr. 34-35; GE 3.
Debt 10/SOR ¶ 1.j.	Phone company collection account in the amount of \$612.00.	Status unknown. Applicant disputing bill. Claims account not his.	Tr. 35-37; AE E.
Debt 11/SOR ¶ 1.k.	Dental office collection account in the amount of \$293.00.	Made payment arrangements to start ay 2005.	Tr. 37-39; AE G.

Applicant attributes his past financial problems to his divorce in 1998, and the costs of maintaining two households. He claims Debt 2 is his son's account and Debt 10 is owed by his sister.

On April 19, 2001, Applicant submitted a signed, sworn statement to the Defense Security Service. GE 2. Many of the debts listed above were discussed in that statement. Applicant stated, "If I were in a position to be able to satisfy my overdue debts, I would be more than happy to do so. However, until my wife's medical bills are resolved, I do not anticipate that I will be able to begin repaying those debts." GE 2.

DOHA forwarded Applicant a Financial Interrogatory, which he completed on April 9, 2003. GE 3. Applicant made a number of assertions regarding his intentions to resolve his then outstanding debts, many of which later became the basis for the eleven debts alleged in the SOR. A summary of those assertions and corresponding debt numbers are listed below:

Debt 2 - Applicant stated this was his son's account and that his son was supposed to settle the account;

Debt 3 - Applicant stated that this was a joint account he held with his ex-wife and the creditor/bank was supposed to be sending him a payment schedule;

Debt 4 - Applicant stated he did not realize the amount owed was so high and he would make contact with the creditor to pay account off;

Debt 5 - Applicant stated that this was a billing error between the creditor and insurance company and if the insurance company did not pay, he would pay the account;

Debt 6 - Applicant stated he had contacted the creditor on March 14, 2003, and was setting up a monthly payment plan;

Debt 7 - Applicant stated this account was supposed to be paid by the insurance company and if the insurance company did not pay in 90 days, he would pay the account off;

Debt 8 - Applicant stated he had sent a \$120.00 money order to pay this account off;

Debt 9 - Applicant stated an amount of \$133.00 had been applied to this account with the return of equipment and the remaining balance would be paid soon;

Debt 10 - Applicant stated account was opened in 1965 by his father and his sister was currently living at the address of his father. Applicant forwarded a "fraud package" to the phone company; and

Debt 11 - Applicant stated he would be pay this account off by the end of April 2003.

Most recently, in Applicant's Answer to SOR, dated February 10, 2004, he indicated he had reached a repayment plan as of February 6, 2004 for Debt 1; he continued to state Debt 2 was his son's account, that Debts 3, 4, 5, 6, 7, 8, 9, and 11 would be paid off within the next 30 to 45 days. He stated Debt 10 was owed by his sister, who failed to transfer this account to her name when Applicant's father passed away

As the above chart reflects, Applicant has not paid or otherwise resolved seven of the listed 11 debts (Debts 2, 5, 6, 7, 8, 9, 10).

On January 25, 2001, Applicant completed his security clearance application. Question 38 asked if, in the previous seven years, Applicant had been over 180 days delinquent on any debts. Question 39 asked if he was then over 90 days delinquent on any debts. Applicant answered "no" to both questions. GE 1. In his Answer to SOR, Applicant admitted falsifying these responses and explained at his hearing, "Well, first of all, I didn't want numerous people to see that application when it went through the system, from my office up through our business office. . . . I didn't believe that I was delinquent that far on the accounts. . . . No more than 60 days." Tr. 40-41.

Applicant's Report of Credit dated February 24, 2001 reflects that Debt 2 was charged off in November 1998, that Debt

5 had been placed in collections in October 1999 , that Debt 6 had been placed in collections in March 2000, that Debt 7 had been placed in collections in June 2000, and Debt 8 had been placed in collections in June 1999.

Applicant testified he was diagnosed with 70 percent blockage on the left ascending aorta and was currently under medical treatment for that condition. He declined open heart surgery and opted for treatment through a regimen of medication. Tr. 45. Applicant further testified his wife is unable to work and is afflicted with bladder and kidney problems, was recently diagnosed with hepatitis C, and has seizures. Tr. 46-47.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had 11 delinquent debts (§§ 1.a. through 1.k.) totaling \$34,513.00. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established its case under Guideline F by Applicant's admissions and evidence submitted. Applicant contends Debts 2 and 10 are not his; however, he did not submit any documentation supporting his claim nor any documentation that he has attempted to remove the debts from his credit report (§§ 1.b. and 1.j.). His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant has done little to resolve his past debts despite his assurances he would do so on two separate occasions. He represented that he had paid Debt 8 in his Financial Interrogatory Form in April 2003, which later proved to be false. These actions instill little confidence that he is working to resolve these debts and suggest a lack of sincerity in responding to reviewing authorities on matters of significance. Although Applicant has made limited progress, he still has a long way to go in achieving financial solvency. His divorce was final in February 1998, seven years ago. Applicant's testimony regarding his current wife's medical condition and his medical condition also failed to adequately explain his lapses in financial accountability during the past seven years. Given the length of time elapsed since Applicant's divorce and ongoing family medical problems, I am unable to apply Financial Mitigating Condition (FC MC) E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . , unexpected medical emergency, . . . , divorce or separation)*). Under the circumstances, Applicant has not mitigated the security concerns raised by his delinquent debts. I find against Applicant.

Guideline E- Personal Conduct

In the SOR, DOHA alleged Applicant falsified his security clearance application by deliberately failing to disclose that he had delinquent debts (§§ 2.a. and 2.b.). *The Concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant admitted he falsified his responses regarding his debt because he did not want company employees to see his debts and added that he did not believe his accounts were delinquent more than 60 days. Not wanting the personnel involved in the processing of security clearance applications to see information that may be perceived as embarrassing is not a sound reason to provide false information. Furthermore, Applicant's suggestion that he did not believe his accounts were delinquent more than 60 days is clearly rebutted by the facts. His bad debts have been ongoing since 1998.

The government requires those entrusted with classified information to be straightforward, honest and diligent in the information they provide. Applicant's behavior not only raises questions about his ability to protect classified information, but also raises a question about his honesty in future cases regarding the integrity of the security-clearance process. None of the mitigating conditions listed in the guidelines apply to Applicant's case. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.-1.k.: Against Applicant

Paragraph 2. Guideline E: AGAINST Applicant

Subparagraph 2.a.-2.b: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuidor

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.